

2/7589

STATE OF SOUTH CAROLINA

(Caption of Case)

Lisa Lochbaum  
Complainant/Petitioner,

v.

Utilities Services of South Carolina,  
Defendant/Respondent.

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

COVER SHEET

DOCKET  
NUMBER: 2009 - 39 - W

(Please type or print)

Submitted by: Benjamin P. Mustian, Esquire

SC Bar Number: 68269

Address: Post Office Box 8416

Telephone: 252-3300

Columbia, SC 29202

Fax: 771-2410

Other:

Email: bmustian@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

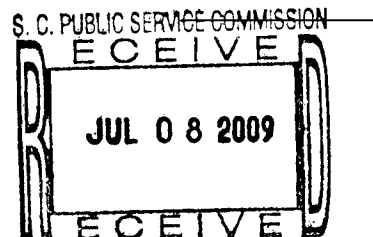
☐ Request for item to be placed on Commission's Agenda expeditiously

☒ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input checked="" type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		

Print Form

Reset Form



**WILLOUGHBY & HOEFER, P.A.**

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY  
JOHN M.S. HOEFER  
RANDOLPH R. LOWELL  
ELIZABETH ZECK\*  
BENJAMIN P. MUSTIAN  
MICHAEL R. BURCHSTEAD  
ANDREW J. MACLEOD

AREA CODE 803  
TELEPHONE 252-3300  
TELECOPIER 256-8062

TRACEY C. GREEN  
ALAN WILSON  
SPECIAL COUNSEL

\*ALSO ADMITTED IN TX

July 6, 2009

**VIA FIRST CLASS MAIL**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
Post Office Box 11649  
Columbia, South Carolina 29211

RE: Lisa Lochbaum, Complainant/Petitioner v. Utilities Services of South Carolina,  
Inc., Defendant/ Respondent. Docket No.: 2009-39-W

Dear Mr. Terreni:

Enclosed for filing on behalf of Utilities Services of South Carolina, Inc. are the original and one (1) copy of Defendant's Motion to Strike in the above-referenced matter. By copy of this letter, I am serving a copy of these documents upon the parties of record and enclose a Certificate of Service to that effect.

I would appreciate your acknowledging receipt of these documents by date-stamping the extra copies that are enclosed and returning the same to me via our courier.

If you have any questions, or if you need any additional information, please do not hesitate to contact me.

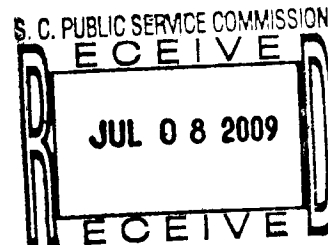
Sincerely,

**WILLOUGHBY & HOEFER, P.A.**



Benjamin P. Mustian

BPM/cf  
Enclosures



The Honorable Charles L.A. Terreni

July 6, 2009

Page 2

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cc: Jeffrey M. Nelson, Esquire  
Lisa Lochbaum

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2009-39-W**

IN RE:	)	
	)	
Lisa Lochbaum,	)	
	)	
Complainant/Petitioner	)	<b>MOTION TO STRIKE</b>
	)	
v.	)	
	)	
Utilities Services of South Carolina, Inc.,	)	
	)	
Defendant/Respondent.	)	
	)	

Pursuant to 26 S.C. Code Ann. Regs. 103-829 and applicable South Carolina law, Utilities Services of South Carolina, Inc. (“USSC” or the “Company”) hereby moves the Public Service Commission of South Carolina (“Commission”) to strike portions of the prefiled direct testimony of complainant. In support thereof, the Company would show as follows:

1. Complainant initiated this action by filing a complaint with the Commission on or about January 26, 2009. By letter dated April 27, 2009, the Commission instructed the parties of record to prefile testimony pursuant to 26 S.C. Code Ann. R. 103-845.C (Supp. 2008). Complainant’s direct testimony was then due on May 12, 2009.
2. By letter dated May 12, 2009, complainant asserted that the information contained in the complaint constituted complainant’s direct testimony; however, complainant submitted copies of e-mails from persons represented to be residents of Dutchman Shores.

3. On May 15, 2009, USSC moved to dismiss the complaint for the complainant's failure to file testimony in accordance with the Commission's instructions and rules and regulations. Alternatively, USSC requested that the Commission establish new testimony deadlines to afford the parties of record comparable time to prepare prefiled testimony. Additionally, USSC moved to strike the e-mails submitted by complainant as irrelevant to the instant complaint and unrelated to service provided by USSC to complainant.

4. On May 27, 2009,<sup>1</sup> the Commission granted USSC's alternative motion and allowed complainant another opportunity to prefile direct testimony conforming to the Commission's rules and regulations and which was to reflect "her personal knowledge and experience concerning the issues raised in her complaint." Additionally, the Commission granted USSC's motion to strike the e-mails from the evidence of the case as hearsay.

5. On or about June 1, 2009, complainant submitted prefiled direct testimony. Therein, complainant included excerpts from the testimony of Ms. Dawn Hipp of the South Carolina Office of Regulatory Staff ("ORS") as well as an exhibit ("Exhibit") sponsored by Ms. Hipp in Docket No. 2005-217-WS. Complainant Prefiled Direct Testimony, p. 1. Complainant incorrectly attributes the Exhibit as constituting "claims" made by the Company. Additionally, complainant's prefiled direct testimony includes statements attributed to ORS staff and other residents of Dutchman Shores. See Complainant Prefiled Direct Testimony, p. 4, first and fourth unnumbered bullet points.

6. USSC submits that the above-referenced portions of complainant's prefiled direct testimony should be stricken as impermissible hearsay. Commission Regulation 103-846.A (Supp. 2008) states that in proceedings before the Commission, "[t]he rules of evidence as applied in civil

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<sup>1</sup> The Commission's May 27, 2009 directive was subsequently memorialized in Order No. 2009-354, dated June 2,

cases in the Court of Common Pleas shall be followed.” South Carolina Rules of Evidence 801(C) defines hearsay as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”

7. The prefiled direct testimony filed by complainant in this matter contains statements made by persons other than complainant and has been offered to prove the truth of the matter asserted and is constitutes inadmissible hearsay. See SCRE, Rule 802. Therefore, USSC respectfully objects to and moves the Commission to strike the following portions of complainant’s prefiled testimony from the record of this case:

Page 1, third unnumbered paragraph, beginning with the sentence “Instead, in Order No. 2006-22...” through page 2, second unnumbered paragraph ending with the sentence “...implementation of the pass through mechanism.”

Page 4, first unnumbered bullet point, the sentence “Staff asserts that our...”

Page 4, fourth unnumbered bullet point beginning with the sentence “USSC explained to Staff...” and ending with the sentence ending “...caught this reading up.”

8. In the furtherance of administrative economy, USSC respectfully requests that the Commission delay its consideration of this objection and motion until the hearing on the merits in this matter currently scheduled for August 3, 2009.

Wherefore, USSC respectfully requests that the Commission grant the Company’s Motion to Strike as set forth herein and grant such other relief as the Commission deems proper.

[SIGNATURE PAGE FOLLOWS]



John M.S. Hoefer

Benjamin P. Mustian

**WILLOUGHBY & HOEFER, P.A.**

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Defendant/Respondent

Columbia, South Carolina  
This 6<sup>th</sup> day of July, 2009

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

**DOCKET NO. 2009-39-W**

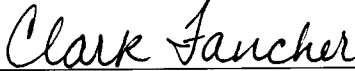
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Utilities Services of South Carolina, Inc., )  
Defendant/Respondent )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of the **Defendant's Motion to Strike** in the above-referenced action by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Lisa Lochbaum  
221 Dutchman Shores Circle  
Chapin, SC 29036

Jeffrey M. Nelson, Esquire  
**Office of Regulatory Staff**  
Post Office Box 11263  
Columbia, South Carolina 29211

  
\_\_\_\_\_  
Clark Fancher

Columbia, South Carolina  
This 6<sup>th</sup> day of July, 2009.